



1 ENVIRONMENTAL AND PUBLIC PROTECTION CABINET

2 Department for Environmental Protection

3 Division of Waste Management

4 (Amendment)

5 401 KAR 42:090. Financial responsibility.

6 RELATES TO: KRS 224.10, 224.60, 40 CFR Part 280 Subpart H, Part 281, 42 U.S.C.  
7 6991c

8 STATUTORY AUTHORITY: KRS 224.10-100, 224.60-105, 40 CFR Part 280 Subpart  
9 H, Part 281, 42 U.S.C. 6991c

10 NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the  
11 Environmental and Public Protection Cabinet [~~Natural Resources and Environmental Protection~~  
12 ~~Cabinet~~] to develop and conduct programs that provide for the prevention, abatement, and  
13 control of contaminants that may threaten the environment. KRS 224.60-105 [(2)] requires the  
14 cabinet to regulate underground storage tank (UST) systems by requiring registration  
15 [~~notification~~], minimum construction and performance standards, leak detection, recordkeeping,  
16 release reporting, corrective action, closure, financial responsibility, and other standards to  
17 protect public health and the environment. KRS 224.60-105(3) requires the cabinet to establish a  
18 regulatory program that implements federal requirements for UST systems. This chapter  
19 identifies requirements for UST systems. This administrative regulation establishes requirements  
20 for demonstrating financial responsibility for corrective action and for compensation of third

1 parties for bodily injury and property damage caused by sudden and nonsudden accidental UST  
2 system releases arising from the operation of UST systems containing petroleum.

3 Section 1. Adoption of Federal Regulations. The requirements for demonstrating  
4 financial responsibility for corrective action and for compensation of third parties for bodily  
5 injury and property damage caused by sudden and nonsudden accidental UST system releases  
6 arising from the operation of UST systems containing petroleum are governed by 40 CFR Part  
7 280 Subpart H [(1994)].

8 Section 2. State Fund Mechanism for Financial Responsibility. (1) The Petroleum  
9 Storage Tank Environmental Assurance Fund may be utilized as a mechanism to demonstrate  
10 financial responsibility in accordance with 40 CFR 280.101 if the following requirements are  
11 satisfied:

12 (a) A person owns or operates a petroleum storage tank(s);

13 (b) The owner or operator certifies financial responsibility for the petroleum storage  
14 tank(s) in accordance with KRS 224.60-120; and

15 (c) The owner or operator registers the petroleum storage tank with the cabinet in  
16 accordance with 401 KAR 42:020.

17 (2) An owner or operator shall be deemed by the cabinet to have satisfied the  
18 requirements of subsection (1) to utilize the Petroleum Storage Tank Environmental Assurance  
19 Fund to meet the financial responsibility requirements of 40 CFR 280.101 if:

20 (a) A Certificate of Registration and Reimbursement Eligibility has been issued to the  
21 owner or operator of a petroleum storage tank in accordance with 401 KAR 42:020; and

1           (b) The cabinet has determined that the owner or operator qualifies for participation in the  
2 Financial Responsibility Account or the Petroleum Storage Tank Account through compliance  
3 with 401 KAR 42:030 and 42:040.

4           (3) Federal and state owned facilities shall not be eligible to utilize the state fund  
5 mechanism.

6           Section 3. Certification of Financial Responsibility. An owner or operator shall certify,  
7 through signature on the UST Facility Registration Form required in 401 KAR 42:020, that  
8 financial responsibility has been established and maintained in accordance with Section 1 of this  
9 administrative regulation.

401 KAR 42:090 is approved for filing.

4-12-2006

Date

John W. Clay

John W. Clay, Deputy Secretary  
Environmental and Public Protection Cabinet

for

LaJuana S. Wilcher, Secretary  
Environmental and Public Protection Cabinet

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on May 23, 2006 at 10:00 AM (Eastern Time) at the Capital Plaza Tower Auditorium, 500 Mero Street, Room 228, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by May 16, 2006, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until May 31, 2006. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

**CONTACT PERSON:** Bruce Scott, P. E., Director  
Division of Waste Management  
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Frankfort, KY 40601  
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Email: Bruce.Scott@ky.gov

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation #: 401 KAR 42:090

Contact person: Bruce Scott, Director

(1) Provide a brief summary of:

- (a) What this administrative regulation does: This administrative regulation establishes requirements for demonstrating financial responsibility for corrective action and for compensation of third parties for bodily injury and property damage caused by sudden and nonsudden accidental releases arising from the operation of UST systems containing petroleum.
- (b) The necessity of this administrative regulation: This administrative regulation is necessary to establish requirements for demonstrating financial responsibility and compensation for third party damages.
- (c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms by establishing requirements for demonstrating financial responsibility and compensation of third party damages.
- (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists by establishing requirements for demonstrating financial responsibility and compensation of third party damages.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

- (a) How the amendment will change this existing administrative regulation: This amendment establishes that the Commonwealth's Petroleum Storage Tank Environmental Assurance Fund (PSTEAF) may be used as a mechanism to demonstrate financial responsibility.
- (b) The necessity of the amendment to this administrative regulation: This amendment is necessary to clarify that the PSTEAF may be used as a financial responsibility mechanism.
- (c) How the amendment conforms to the context of the authorizing statutes: This amendment conforms by establishing that the PSTEAF may be used as a financial responsibility mechanism.
- (d) How the amendment will assist in the effective administration of the statutes: This amendment assists by establishing that the PSTEAF may be used as a financial responsibility mechanism.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment will affect those individuals that own and operate underground storage tanks in the Commonwealth of Kentucky, approximately 13,400. UST Contractors that operate in the Commonwealth of Kentucky will also be affected by this regulation.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment: This amendment only updates the incorporated materials for UST systems.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: There will be no costs associated with implementation of this administrative regulation.

(b) On a continuing basis: There will be no additional costs associated with the implementation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation and enforcement of this administrative regulation is funded through two Federal grants and the restricted fund receipts described in KRS 224.60-150.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: There will not need to be an increase in funding or fees to implement this amendment.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees.

(9) TIERING: Is tiering applied? (Explain why tiering was or was not used.)

No tiering is applied. This administrative regulation applies to all owner and operators of USTs. To apply tiering to the amendment would unduly regulate some entities with USTs while not regulating others.

## FISCAL NOTE ON LOCAL GOVERNMENT

Administrative Regulation #: 401 KAR 42:090

Contact person: Bruce Scott, Director

Phone Number: (502) 564-6716

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes   X   No        If yes, complete question 2 to 4. If no, you do not need to file this form.

2. State what unit, part, or division of local government this administrative regulation will affect.

This amendment may affect local governments that own or operate USTs.

3. State, in detail, the aspect or service of local government to which this administrative regulation relates, including identification of the applicable state or federal statute or regulation that mandates the aspect or service or authorizes the action taken by the administrative regulation.

This amendment relates to the agents of local government that own or operate USTs. KRS 224.60-105 authorizes the promulgation of this administrative regulation.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): No effect.

Expenditures (+/-): No effect.

Other Explanation: The cabinet expects no significant impact from this administrative regulation.